UNITED STATES
v.
RALPH PAGE

IBLA 88-310 Decided March 18, 1991

Appeal from a decision of Administrative Law Judge Harvey C. Sweitzer declaring the Big Chief, Buffalo Bill, El Paso-Navajo Combined, Flagstaff Bonanza, Gold Bond No. 3, Gray Eagle, Papoose, and Squaw lode mining claims invalid for lack of discovery. I 016479.

Affirmed.

1. Administrative Authority: Estoppel--Mining Claims: Determination of Validity

The Secretary of the Interior has continuing jurisdiction with respect to public lands until patent issues, and he is not estopped by principles of res judicata or finality of administrative action from correcting or reversing an erroneous decision by his subordinates or predecessors in interest; so long as legal title remains in the Government, the Secretary has the power and duty, upon proper notice and hearing, to determine whether the claim is valid. The existence of older favorable mineral reports will
not preclude a later contest of the validity of mining claims based on a subsequent mineral examination disclosing the absence of a valuable mineral deposit.

2. Mining Claims: Determination of Validity--Mining Claims: Discovery: Marketability

A discovery exists where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This standard has been supplemented by the marketability test which requires a showing that the mineral deposit can be extracted, removed, and marketed
at a profit.

3. Evidence: Burden of Proof--Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge. A prima facie case has been made when a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

4. Mining Claims: Contests--Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally

A valuable mineral sample does not equate to a valuable mineral deposit. An earlier report finding the existence of valuable minerals on a mining claim without analysis of the quality and quantity of the mineral deposit may be insufficient to overcome a prima facie case based on analysis of later detailed samples which lead a qualified mineral examiner to conclude at the hearing in a mining contest that there has been no discovery of a valuable mineral deposit.

5. Mining Claims: Contests--Mining Claims: Discovery: Generally

Government mineral examiners are not required to perform discovery work for claimants or explore beyond a claimant's explored workings. It is therefore incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. When a mining claimant fails to do so, he assumes the risk that the mineral examiner will be unable to verify a discovery. In such a case an unsupported allegation that the samples taken by the examiner were not representative of the mineral deposit will not overcome a prima facie case that there is no mineral discovery.

6. Contests and Protests: Generally--Mining Claims: Generally--Mining Claims: Contests--Mining Claims: Determination of Validity--Rules of Practice: Government Contests

The motivation of a Government agency initiating a contest against mining claims is irrelevant. The Board

of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal. When that issue is properly presented, mining claims are properly declared null and void upon a showing of lack of discovery of a valuable mineral deposit within the claims.

APPEARANCES: Neal D. Page, Prineville, Oregon, for appellant/contestee; Erol Benson, Esq., Office of the General Counsel, for the U.S. Department of Agriculture, Ogden, Utah, for appellee/contestant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal is brought from a decision rendered after a hearing in a mining contest. Ralph Page, the contestee, has appealed 1/ a decision dated February 29, 1988, by Administrative Law Judge Harvey C. Sweitzer declaring eight adjacent lode mining claims, collectively referred to as the Lime Peak Group, invalid for lack of discovery. The claims were located on lands within the Payette National Forest, and are situated in secs. 12 and 13, T. 20 N., R. 4 W., Boise Meridian, Idaho.

On August 13, 1985, the Bureau of Land Management (BLM) filed a complaint on behalf of the Forest Service (FS), U.S. Department of Agriculture, alleging that the land embraced within these claims was nonmineral in character; that the claims did not contain minerals within their boundaries of sufficient quality, quantity, and value to constitute a discovery; and that they were not being held in good faith for bona fide mining purposes. On August 6 and 7, 1986, a contest hearing was held before Administrative Law Judge Sweitzer. 2/

In his decision, Judge Sweitzer rejected the implicit contention of the contestee that the claims should be found valid on the ground of equitable estoppel based on older mineral examinations which were favorable to the contestee. In support of his decision in this regard, Judge Sweitzer cited the principle, that until patent issues, the Secretary of the Interior has

1/ Neal Page represented his father at the hearing in this matter and has prosecuted this appeal on his behalf pursuant to the regulation at 43 CFR 1.3(c)(i), which provides that an individual not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of a member of his family. We received a letter on June 6, 1988, informing the Board of the death of appellant, Ralph Page, and indicating appellant had devised his interests in the claims which are the subject of this appeal to Neal Page.

2/ The regulation at 43 CFR 4.451-1 provides that "[t]he Government may initiate contests for any cause affecting the legality or validity of * * * any mining claim." An answer to the Government complaint was filed by Ralph Page on Oct. 4, 1985. Pursuant to 43 CFR 4.450-7(b), on Oct. 18, 1985, the Idaho State Office, transmitted the case to the Hearings Division, Office of Hearings and Appeals, for hearing.

continuing jurisdiction and he is not estopped from correcting or reversing erroneous decisions of his subordinates or predecessors. With respect to the issue of discovery, Judge Sweitzer found that the contestant had presented a prima facie case that there was no discovery of a valuable mineral deposit on any of the contested claims. This decision was based on the testimony of the FS mining engineers regarding the value of the mineral deposits found on the claims and the mining and processing costs required to recover the mineral content. With respect to the Gray Eagle claim where certain samples showed values in excess of the cost of production, Judge Sweitzer's decision was based on the evidence of the isolated and discontinuous nature of the mineralization and a lack of sufficient quantity of mineralization to support a mining operation. Finding that evidence proffered by appellant was insufficient to overcome contestant's prima facie case that the claims were invalid, the Administrative Law Judge held that while the Government did not establish that the claims were being held in bad faith by Page, FS did establish that there had been no discovery made
on the claims. He therefore found the Lime Peak Group of claims to
be invalid for lack of discovery of a valuable mineral deposit.

In his statement of reasons for appeal (SOR), appellant argues that the Administrative Law Judge erroneously concluded that the Government is not estopped from asserting the invalidity of these claims based upon earlier mineral examinations, and urges the Board to reverse the Administrative Law Judge's decision, based upon Ralph Page's reliance upon 1957 and 1965 FS mineral examination reports which found that the claims were supported by a valid discovery (SOR at 5). Appellant alleges that the Administrative Law Judge was erroneously swayed by the fact that the contestee could not show that a successful mining operation had ever been undertaken on the claims, and that evidence introduced by FS mineral examiners at the August 1986
hearing was based upon "fabricated fact," in that a "hypothetical mining operation" became the deciding factor upon which Judge Sweitzer based his conclusion (SOR at 2-3). Page contends that Judge Sweitzer ignored discrepancies in the FS findings pertaining to mineral values as set forth in Contestant's Exhibits 11-13 (SOR at 3-4). Finally, Page argues that points of discovery were ignored by the examiners in their September 1981 and March 1986 field examinations of the claims; that some of their samples were collected without representation of the contestee; and that the field examiners were fraudulent and deceptive with respect to their examination
of the Page claims (SOR at 2-3). Appellant alleges that FS was motivated
to invalidate his claims by resentment over the presence of mining claims within the boundaries of national forests (SOR at 6).

A review of the background of the Lime Peak mining claims is useful
to an understanding of the issues raised on appeal. It appears from the record that Ralph Page acquired the Lime Peak lode claims in June 1952. 3/

3/ It appears from attachment 1 to the contest complaint in the case file that all claims at issue here were originally located by Owen Hill or by Hill and his associate, Danaul (Daniel) Murphy. The El Paso claim was located on Jan. 1, 1902. Gold Bond No. 3 was located on June 3, 1935.

The eight claims at issue are part of an original group of 11 claims which were located in secs. 11, 12, 13, and 14, T. 20 N., R. 4 W., Boise Meridian, Idaho, within the Payette National Forest. 4/ On November 2, 1957, a mineral examination of the claims was made by G. Richard Plumb, a mineral examiner employed by FS, to ascertain whether a valid mineral claim had been established pursuant to section 5 of the Surface Resources Act of July 23, 1955, as amended, 30 U.S.C. § 613 (1988). On the basis of three mineral samples which were assayed, Plumb concluded that Page had made a discovery on each of the claims at issue for purposes of this statute (Contestee's Exh. A). Page filed application for patent of these claims on June 4, 1965.

On September 29, 1965, Plumb and a colleague, V. T. Dow, again performed a mineral examination with respect to the Lime Peak Group, as part of the patent application process. Additional samples were taken from some of the claims. The samples were assayed by Black and Deason Assayers, Salt Lake City, Utah. In the report of Plumb and Dow dated November 15, 1965, it was recommended that "all of the eleven claims be recognized as meeting the requirements of the mineral patent laws as to mineral discovery and expenditures" (Contestee's Exh. B). 5/ The report further recommended that BLM should clearlist for patent all claims for which full possessory title was recognized in the appellant. A letter from the Regional Forester to BLM dated December 15, 1965, recommended to BLM that the claims be clearlisted for patent (Contestee's Exh. D).

On June 8, 1971, subsequent to resolution of the appeal regarding the claims in secs. 11 and 14, BLM again requested a report and recommendations regarding the remaining eight claims from the Regional Forester,

fn. 3 (continued)
Big Chief, Buffalo Bill, Papoose, Squaw, and Navajo were located on July 1, 1945. The Flagstaff Bonanza and Gray Eagle claims were located on Sept. 7 and 10, 1950, respectively. Hill deeded these claims, known collectively as the Lime Peak Group, to Ralph Page on June 26, 1952. On Mar. 25, 1963, Ralph Page filed suit in the District Court of the Seventh Judicial District of the State of Idaho to quiet title to these claims. The Decree of the Court quieted title to the claims, subject to paramount title of the United States, on July 8, 1963. The El Paso and Navajo claims were combined into one claim, the El Paso-Navajo Combined, on Oct. 29, 1963, by Ralph Page, as recorded on Nov. 7, 1963.

4/ By decision dated Sept. 9, 1965, BLM rejected appellant's patent application with respect to the Omega, Buckhorn, St. Patrick, and El Paso lode mining claims located in secs. 11 and 14. Additionally, the decision noted that those portions of the Big Chief, Squaw, Buffalo Bill, and Navajo (El Paso-Navajo Combined) located in secs. 11 and 14 were null and void ab initio. This decision was ultimately affirmed by the Board on the ground that the lands in secs. 11 and 14 were withdrawn from appropriation under the mining laws prior to the location of appellant's claims. Ralph Page, 2 IBLA 262 (1971).

5/ This report embraced all of the claims, including those located in secs. 11 and 14, in view of the appeal of the BLM decision rejecting the

application as to those lands which was pending at the time.
Intermountain Region, FS. A report dated November 11, 1978, introduced at the hearing (Contestant's Exh. 15), indicates that a mineral examination by Frederick Mullin and Norman Stark, geologists, was made on June 29, 1976. The recommendation of that report was that "[a] valid mineral discovery has not been made within the Limepoint Group of claims that will satisfy the requirements of the General Mining Law" (Contestant's Exh. 15 at 2).

Subsequently, in response to an inquiry from appellant's attorney regarding the patent application, BLM replied by letter dated January 30, 1980, that proof of publication had never been filed. With regard to mineral examination by FS, BLM's January 30, 1980, correspondence stated:

> [a]lthough examination of the claims was requested from the Forest Service on June 8, 1971, the requirement to do so was out of sequence. After the above items are submitted and all other aspects of the application are found to be in order, final certificate will be issued in the name of the applicant. [6/]

Although on September 16, 1971, BLM had authorized publication of Page's pending patent application, the local newspaper confirmed on June 9, 1980, that the required publication of notice had not occurred; these procedures were therefore once again initiated. Affidavit of publication was received by BLM from the authorized local newspaper on December 5, 1980. By decision dated June 16, 1981, final certificate for the claims was issued to Ralph Page by the BLM Idaho State Office. The decision advised that further adjudication of the case was suspended "pending the report of field investigation with respect to the discovery of valuable mineral." The following day, BLM again requested a mineral examination report and recommendations from FS. By letter dated July 22, 1985, FS reversed its prior recommendation that the claims be clearlisted by notifying BLM of its recommendation that Ralph Page's patent application for the Lime Peak Group not be clearlisted.

[1] Appellant urges the Board to reverse Judge Sweitzer's determination that, despite the 1965 recommendations of Plumb and the Regional Forester that the claims be clearlisted for patent, the Government is not estopped from asserting the invalidity of the Lime Peak claims. Judge Sweitzer held that "while the contestee may understandably have felt unjustly treated in this case due to an initial position taken by FS that his claims were valid and patentable," the Government is not barred by laches or estoppel from contesting the validity of mining claims at any time prior to issuance of patent (Decision at 7).

We must affirm Judge Sweitzer's ruling that appellant has no remedy in estoppel or laches against the Government. Until patent is issued, the Secretary of the Interior has continuing jurisdiction with respect to public

6/ Letter from Vincent Strobel, BLM, to Fred Kowolowski, counsel for appellant.

lands, and is not estopped by principles of res judicata or finality of administrative action from correcting or reversing an erroneous decision by his subordinates or predecessors in interest. Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364 (9th Cir. 1976); United States v. United States Borax Co., 58 I.D. 426, 430 (1943). 7/

The decision by FS to contest the claims was based on a mineral examination of appellant's claims by Raymond Wallace, mining engineer, and Robert Sykes, mining geologist. The FS mineral examiners undertook an extensive examination of the claims at issue from September 8-17, 1981. They spent much of the first day meeting with Ralph Page and Neal Page to obtain their input on the best places to take mineral samples on the claims (Tr. 37). Wallace testified that Neal Page advised the FS examiners that "the best discoveries were probably located on the Gray Eagle claim" and that a number of sample sites which the contestee's wanted them to examine were marked with orange survey flagging (Tr. 37). Wallace explained in detailed testimony how mineral samples were taken from various improved sites on each of the contested claims shown on the map of the Lime Peak Group (Contestant's Exh. 1). He explained how the chip/channel samples were taken, giving the width of each mineral sample taken (Tr. 37-62). 8/

Wallace testified that the samples were assayed and a report was prepared setting forth the content of gold, silver, and copper (Tr. 54; Contestant's Exh. 11). The mineral examiners prepared a report converting the content of gold, silver, and copper in the samples to a dollar value based on 1984 and 1987 prices for those minerals (Tr. 63; Contestant's Exh. 13). Wallace testified that for the purpose of computing the mineral values the sample lengths were converted to a 5-foot mining width (Tr. 64).

At the hearing Wallace testified that, in a lot of the audits, the mineralization "was faded out or came and went in a very short space" (Tr. 70-71). According to Wallace, "due to the discontinuous nature of these lensitic or pod-like exposures of the mineralized zones, any measurements or continuations of any ore body between these exposures was impossible to ascertain * * *" (Tr. 66). Therefore, in computing costs of mining, Wallace assumed a hypothetical block of ore 100 feet long, 100 feet high, and 5 feet wide (Tr. 66-67). Wallace testified that he had no reason to believe that such a body of ore existed on the claims because of the "widespread discontinuous nature of the mineralization" he observed (Tr. 70).

7/ It must be pointed out that delays in adjudication of appellant's 1965 patent application were not simply caused by Government action or inaction. The appeal of BLM's decision concerning the validity of claims located on lands withdrawn from mineral entry was resolved in 1971. From 1971 until 1980, there was a failure to comply with the publication requirements.

8/ Robert Sykes testified as to the details of the samples which he took (samples 1648 through 1652) on the El Paso-Navajo Combined claim (Tr. 81-83).

The projected costs of mining were based on an underground mining operation in view of the obstacles to an open pit type of operation presented by the severe topography 9/ of the claims (Tr. 66). Wallace estimated a total cost of $44.64 per ton of ore based on the costs of running a drift to the ore body, mining by the open stope method, processing the ore by acid leaching, and refining the concentrate (Tr. 66-70). This cost exceeded the value of the minerals in all of the samples except 1667 and 1668 taken from improvement number 2, one of the audits on the Gray Eagle claim (Contestant's Exh. 13). Wallace testified that recovery of copper from ore using the acid leaching process 10/ is "somewhere in the neighborhood of forty (40) percent," that gold values are not recovered in this process, and that less than half the silver values are recovered (Tr. 71-72). With this background, it was his opinion that the mineral value recoverable even from these samples was less than the cost of production (Tr. 73). He thus concluded that a reasonably prudent miner would not be justified in further expenditure of his labor and means on any claim in the Lime Peak Group, because an economically viable operation could not be conducted there, and, if one were attempted, it would not be profitable (Tr. 74). 11/

Wallace was asked in his testimony whether he felt that the most favorable sample points (1667 and 1668) were part of a deposit that was larger in scope and continuous. He responded that the nature of the mineralization

9/ The testimony established that there is a 1,900-foot difference in elevation on the claims (Tr. 33, 41).

10/ With respect to the processing of the ore, Wallace testified as follows:

"[I]n looking at * * * the different types of ore mineralization, we determined that there was probably going to be a metallurgical problem involved with the sulfide ore as opposed to the oxide ore and we [e]nvisioned, in order to maintain --- or obtain as much return as we could from the oxide and the sulfide, we [e]nvisioned a le[a]ch type of operation to where we could le[a]ch the copper using sulfuric acid or furic sulfate, and then precipitating the copper onto a --- sponge iron --- a precipitation plant, if you will, similar to what they're doing at many of the major copper operations throughout the west." (Tr. 68).

11/ These computations were made using the 1987 valuations. However, in our decision in United States v. Whittaker (On Reconsideration), 102 IBLA 162 (1988), which issued subsequent to the hearing below, we noted that when a final certificate has been issued, the date on which to determine the existence of a discovery is the date of entry, i.e., the date of issuance of the final certificate. In this case, that occurred on June 16, 1981 the average copper price for 1981 was 85 cents per pound, the same as in 1984. See Minerals Yearbook, 1981, Vol. 1 at 282. While this was higher than in 1987, this fact does not compel a different result since, as explained in the text, the deficiencies exhibited by the claims related primarily to the absence of sufficient quantity of high-grade mineralization to justify a prudent man in the further expenditure of his labor and means with a reasonable prospect of success in developing a paying mine.

in improvement #2 on the Gray Eagle claim and that on the nearby improvement #3 on the claim was different (Tr. 74). Wallace also noted that there was no mineralization in the face of the long audit originating in the Papoose
claim and projecting under the Gray Eagle claim "which comes in quite close and below Improvement #2 and #3 on the Gray Eagle * * * which would tend
to make me believe that the mineralization did not project downward from Improvements #2 and #3" (Tr. 74). Robert Sykes, the other FS mining engineer participating in the examination of these claims was also of the opinion that there was not a reasonable probability that a paying mine could
be developed (Tr. 84). Sykes also noted the lack of any evidence of mineralization in the long audit projecting under the Gray Eagle which might indicate the continuation of mineralization at depth (Tr. 84).

[2] The basic standard of discovery under the mining laws was set forth by the Department long ago:

> Where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reason-able prospect of success, in developing a valuable mine, the requirements of the statute have been met.

Castle v. Womble, 19 L.D. 455, 457 (1894); followed, Chrisman v. Miller, 197 U.S. 313, 322 (1905). This standard has been supplemented by the "marketability test" requiring a showing that the mineral deposit can be extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968); United States v. New York Mines, Inc., 105 IBLA 171, 182, 95 I.D. 223, 229 (1988). 12/ Based on the testimony, we must affirm Judge Sweitzer's conclusion that the contestant established a prima facie case of no discovery of a valuable mineral deposit on each of the claims. A prima facie case has been made when a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); United States v. Weekley, 86 IBLA 1 (1985); United States v. Jones, 72 IBLA 52 (1983). The Government examiner is not required to perform discovery work for the claimant. Hallenbeck v. Kleppe, 590 F.2d 852, 859 (10th Cir. 1979). The testimony of the FS mineral examiners to the effect that the costs of mining and recovering the minerals would exceed the recoverable value of the deposit is clearly sufficient to establish a prima facie case.

12/ In United States v. New York Mines, Inc., 105 IBLA at 182, 95 I.D. at 229-230, we noted that it has been held that even with respect to a precious metal such as gold evidence of the costs and profits of mining
the claim are properly considered in determining whether a person of ordinary prudence would be justified in the further expenditure of his labor
and capital, citing Lara v. Secretary of the Interior, 820 F.2d 1535, 1541 (9th Cir. 1987).

[3] It is well established that when the Government contests the validity of a mining claim on the basis of lack of discovery, it bears the burden of presenting sufficient evidence to establish a prima facie case. However, once a prima facie case is presented, the claimant must present evidence sufficient to overcome the Government's case by a preponderance of the evidence on those issues raised. United States v. Springer, 491 F.2d 239, 242 (9th Cir.), cert. denied, 419 U.S. 834 (1974); Foster v. Seaton, supra; United States v. Whittaker, 95 IBLA 271 (1987).

[4] Contestee did not proffer any analysis of mineral values of his own to rebut the prima facie case presented by the contestant. M. L. Page, brother of the contestee, who has about 40 years experience in the mining business testified that there is evidence of copper ore in place on each of the contested claims (Tr. 14-16). He acknowledged, however, that he did not have any assays made of the deposits (Tr. 16). Neal Page testified the contestee felt further exploratory work was unnecessary in view of the favorable Plumb reports (Tr. 178-79). Contestee's major exhibits consist of the mineral reports prepared in 1957 and 1965 by Plumb and Dow (Contestee's Exhs. A and B). The 1957 Plumb report involved only three mineral samples from the claims at issue: RP No. 1 on the Navajo, RP No. 2 on the Papoose, and RP No. 3 taken across the claim line of the Squaw and Buffalo Bill claims (Contestee's Exh. A at 2). The report did not purport to sample all of the claims and contains no discussion of the width or volume of the samples. Wallace testified that he did not see any deposit on the claims that would approximate the 37 percent copper reported in RP No. 3 (Tr. 126). 13/ Wallace noted that there was no information as to how the sample was taken and reiterated that from his examination of the claims "I can not conceive that thirty-seven (37) percent copper is a sample representing a mineralized zone [as] opposed to a specimen or selected hand sample" (Tr. 129). 14/ The 1965 Plumb/Dow report was based on 10 samples, including the three samples taken in 1957. Once again there is no discussion of the width of the samples or the amount of material sampled.

This Board has noted that a valuable mineral sample does not equate to a valuable mineral deposit in holding that a mineral report submitted in a

13/ Wallace acknowledged that selected hand specimens might have that copper content, but they would not be "representative of an ore body" (Tr. 126).

14/ When questioned on cross-examination concerning why his conclusions with respect to validity of the Lime Peak Group differed from the conclusions of Plumb and Dow, Wallace replied:

"I have really no idea why [Plumb's] numbers came up so much different than ours, except I know for a fact that ours do represent a specific volume and we know exactly how much material was taken. In [Plumb's] report there is absolutely no references as to the size, the dimensions, the weight, * * * the volume of any of these samples. * * * I have no idea what these samples represent as far an tonnage or volume of material" (Tr. 140-41).

prior contest of a mining claim finding the existence of valuable minerals on the claim, without assessment of the quality and quantity of the mineral deposit, is insufficient to overcome a prima facie case established at the hearing in a subsequent mining contest. United States v. Clemans, 45 IBLA 64 (1980). In Clemans, we noted the serious questions raised by contestant's expert witness at the later hearing as to the propriety of the sampling method used as the basis for the earlier report. 45 IBLA at 72.

This precedent is very relevant to the present appeal. Accordingly, we must affirm the finding of Judge Sweitzer that the contestee failed to meet the burden of proof required to overcome the prima facie case of lack of discovery.

Appellant challenges the basis of Wallace's testimony that a prudent miner would not be justified in expenditure of his labor on any claim in the Lime Peak Group, because an economically viable operation could not be conducted there. Appellant objects to the difference between the mineral content of the samples as disclosed on the assay results (Contestant's Exhs. 11 and 12) and the values computed based on these samples (Contestant's Exh. 13). However, the testimony established that these values were calculated on the basis of a mining width, the standard practice in the industry (Tr. 64). One of the samples with higher values, No. 1663 on the Gray Eagle, was a 6-inch sample (Tr. 39-40). Appellant has not shown this six-inch deposit could be mined without removing adjacent material not bearing this same mineral content.

[5] Appellant alleges that the FS examiners did not take samples representative of existing deposits, and took samples without the benefit of direction from Ralph Page, and that they "act[ed with] constructive intent to commit fraud" (SOR at 2). The testimony at the hearing does not substantiate this assertion and we find no merit to these allegations. With respect to the method of mineral examination, Wallace testified:

> [I]n September, on the 8th of September 1981--Mr. Sykes and I--set up in the Snake River Canyon and on the 9th of September we met with Mr. Ralph Page, Mr. Neal Page, a fellow by the name of Tom Taylor and Vern McClure, who were associated with friends of Mr. Page as I understand it; and accompanied on that first day by a Mr. Craig Nathe of the U.S. Forest Service.
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> * * * * * * *
>
> On our initial meeting on, essentially that whole day, we spent discussing, with the Pages', Ralph and Neal, as to what we were attempting to do, what we had to do, and for giving them the opportunity to describe to us exactly what they had to show us as fa[r] as improvements and mineralized outcrops. For them the opportunity to show us or provide us information as to where we might take the best samples in order to be truly representative of their mineralization.

> At that time Mr. Neal Page stated that the best discoveries were probably located on the Gray Eagle claim; and there were a
> number of places they stated that had been flagged with orange surveying flagging and these were sample sites that they specifically wanted us to sample.

(Tr. 37-38).

When specifically asked by counsel whether samples were taken from every place Ralph Page asked, Mr. Wallace answered:

> Yes sir, to my knowledge we certainly did. And in the days when either Mr. Vern McClure went with us, we took samples of almost all the discovery cuts and [i]mprovements--and anywhere Mr. McClure pointed out where we probably should sample, we did sample. Ralph himself, unfortunately, was not able to get up on the hillside with us, but in the areas where survey flagging had been hung, we did sample those particular areas.

(Tr. 54). Wallace and Sykes even returned to the site in 1986 to verify that they had selected the best sample locations and to ascertain if there were any new improvements which needed sampling (Tr. 57).

It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. When he does not, he assumes the risk that the examiner will not be able to verify
a discovery of an alleged valuable mineral deposit. United States v. Franklin, 99 IBLA 120 (1987); United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (1980). Government mineral examiners are not required to perform discovery work for claimants, nor to explore beyond a claimant's workings. United States v. McLaughlin, 50 IBLA 176 (1980). We are unable to conclude that appellant has presented evidence of a valuable mineral deposit on the claims which would overcome the prima facie case.

[6] Finally, appellant alleges that, because mining claims have increasingly become politically unpopular in national forest areas, the later mineral examinations conducted by FS were calculated to invalidate Ralph Page's claims without regard to principles of truth, justice, and fairness. The motivation of a Government agency when initiating a contest against a mining claimant is irrelevant to a determination of the existence of a discovery. United States v. Opperman, 111 IBLA 152, 157-58 (1989); United States v. Franklin, supra; United States v. McLaughlin, supra. In the case of In Re Pacific Coast Molybdenum Co., supra at 34, when urged to adopt the position that there should be a different standard applied to mineral discoveries within the boundaries of national forest areas, the Board held: "Where the mining laws apply, they necessarily apply with equal force and effect, regardless of the characteristics of the land involved. The test of discovery is the same whether the land be unreserved public domain, land in a national forest, or even land in a national park."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

James L. Burski
Administrative Judge